Background

In Round 11 of the Block C PCS auction, PCS 2000 entered bids for a number of markets, including Market B324. For each of these selected markets, PCS 2000 intended to, and believed at the time that it did, enter the minimum bid increment. For Market B324, the minimum bid increment would have resulted in a bid of $18,006,000.00. Due to an error, the bid for this market was recorded by the Commission as $180,060,000.00, exactly ten times as large as the intended bid. PCS 2000 discovered the error about two hours after the close of the bidding for Round 11, when it downloaded the round results from the FCC's internet FTP server. PCS 2000 immediately telephoned the FCC's auction contractor to indicate that it had intended to bid $18,006,000.00 and to report that the $180,060,000 bid was in error. Undersigned counsel also contacted officials of the Auction Division to inform them of the error. The Commission verified that the bid had been posted as received, and PCS 2000 withdrew the erroneous high bid of $180,060,000.00 on January 24, 1996.

PCS 2000 has conducted a preliminary investigation of the error, but the precise cause of the erroneous bid remains unknown. The error appears to have occurred in PCS 2000's bid preparation and submission process and was likely caused by some combination of a departure from previously established internal procedures, human error, and the inability to conduct a complete cross-check of the submitted bids against other data prior to the conclusion of the bidding period because of a lack of time. In addition, discovery of the error was delayed because the FCC's confirmation of the bid was not received due to a printer malfunction. PCS 2000 is undertaking measures to ensure that there is no recurrence of these conditions.

PCS 2000 notes that some press reports have erroneously claimed that PCS 2000 attributes the error to the Commission. Because the results reported by the FCC did not reflect the bid that PCS 2000 believed it had submitted, the company contacted the FCC to determine whether an error had occurred in reporting the results. The FCC confirmed that it reported the results that had been submitted, and PCS 2000 has now concluded, as discussed above, that the error occurred in its own bid preparation and submission process and was *not* attributable to the Commission.

Discussion

PCS 2000 submits that the public interest would be served by grant of a waiver (or, in the alternative, a substantial reduction in the penalty) in the unique circumstances of the instant case, that strict application of the prescribed penalty for withdrawing a bid would disserve the public interest, and that the purpose of the rule would not be undermined by a waiver. Prompt resolution of this is essential, because the lack of a decision will severely limit the ability of PCS 2000 to continue its active and aggressive participation in the auction and could aversely affect the willingness of other bidders to participate.

Waiver of the penalty rule under these circumstances would not establish a precedent that would create any opportunity for mischief in the future. The bid submitted in error by PCS 2000 was clearly in error and not an attempt to manipulate the bidding. The $180,060,000.00 bid represented a per-pop price of $110, which is vastly in excess of the likely value of this license. Indeed, the erroneous bid exceeded the previous high bid by 900%, at a time when PCS 2000 (and many other bidders) were making only the minimum bids necessary. All of PCS 2000's bids in Round 11, except the erroneous bid for Market B234, were the minimum permissible bid, and the erroneous bid was exactly ten times the minimum permissible bid of $18,006,000.00. It is obvious that an extra zero was somehow accidentally added to the end of the bid amount. No reasonable bidder would have knowingly bid such a price for this license.

PCS 2000 promptly took steps to notify the Commission that an error appeared to have occurred. As Mr. Easton indicates in his declaration, immediately upon discovering that the FCC had recorded the bid as being $180,060,000.00, he informed Mr. Louis Segalos, an official with the Commission's auction contractor, that an error had occurred. He supplied Mr. Segalos with copies of spreadsheet printouts indicating the bids that PCS 2000 believed it had submitted. Shortly thereafter, counsel informed the Auctions Division staff of the error. The erroneous bid was then withdrawn on January 24, 1996.

The Commission adopted its bid withdrawal penalty rules to deter "[i]nsincere bidding, whether purely frivolous or strategic." *Competitive Bidding*, PP Docket 93-253, *Second Report and Order*, 9 F.C.C.R. 2348, 2373 (1994). Allowing the prompt withdrawal of a clearly erroneous bid without penalty will have no effect on the Commission's ability to penalize those who submit frivolous bids or bids that are part of a manipulative strategy. There is no indication in the *Second Report and Order* that the Commission intended to impose the bid withdrawal penalty on those who withdraw bids that were clearly submitted in error.

Moreover, the level of the bid withdrawal penalty that the Commission adopted was specifically selected in order to take advantage of marketplace incentives by bidders who would consider the penalty as a price component. The Commission never considered the possibility that a bid might be submitted in error for many times the market value of the license. The Commission stated:

> A point to note in considering the appropriate level of bid withdrawal penalty is that the market generally places an upper limit on the amount that bidders will pay to the government for bid withdrawal. If the bid withdrawal penalty is too high, winning bidders who realize they bid too much will generally pay for the license and resell it in the after-market. The cost of doing this would be the difference between the bid price and the price obtained in the after-market . . . .

9 F.C.C.R. at 2373. These economic calculations are relevant only to the intentional submission of an excessive bid and its subsequent withdrawal, not to the withdrawal of a bid erroneously submitted for an amount ten times as high as intended.

In establishing the bid withdrawal penalty, the Commission was particularly sensitive to the financial circumstances of designated entities, who it noted "are less likely to have the option of purchasing a license and reselling it as an alternative to bid withdrawal." *Id.* In the case of a grossly excessive bid submitted in error, a capital-constrained designated entity can neither buy the license at the bid price for resale nor pay a penalty amounting to many times the value of the license. It is noteworthy in this connection that the Commission recognized that "requiring the forfeiture of all funds on deposit with the Commission could, in some cases, be too severe a penalty." In the instant case, the funds PCS 2000 has on deposit (which constitute the majority of PCS 2000's assets) would cover only a fraction of the penalty. Forfeiture of these funds would render this designated entity unable to pay for *any* licenses for which it may be the high bidder. Thus, application of the rules would have a result directly contrary to the purpose for which the rules were adopted.

None of the participants in the C Block auction would be able to pay a penalty of this magnitude. It would vastly exceed the $50 million upfront payment posted by PCS 2000 (and indeed would exceed any Block C bidder's upfront payment) and would, if not waived, render the company unable to acquire any licenses. Other bidders in the auction would be similarly affected by a penalty were they to make a similar mistake. Prompt action on this matter is needed to avoid chilling participation in the auction.

It is important to recognize that if PCS 2000 is subjected to this unduly burdensome penalty, its bidding capacity will be drastically reduced, if not eliminated. As a result, less money will be involved in the auction and licenses may well be undervalued. This would lead to spectrum being assigned on a less than optimal economic basis, instead of being assigned to those valuing most highly. A prompt waiver of the rule would ensure the integrity of the auction process as a whole and minimize any disruption to this process.

PCS 2000 regrets that the error occurred. Nevertheless, no party has suffered any harm as a result of the erroneous bid or its withdrawal. The error occurred relatively early in the auction and the bid was promptly withdrawn. As a result, any party wishing to bid for the market involved is able to do so.

In the event the Commission does not waive the withdrawal bid penalty rule entirely, PCS 2000 respectfully requests that the penalty be reduced very substantially. The Commission never anticipated that a bidder might be subjected to a penalty vastly exceeding the value of the license for which it had bid. A bidder who engages in strategic bidding to close out another bidder and then withdraws its bid will be liable for a penalty that represents a small fraction of the license's value. No public interest would be served by imposing a far greater penalty on a bidder who withdraws an erroneous bid. The Communications Act does not contain specific provisions governing the penalties that may be imposed as part of the auction process, but the provisions of Section 503 concerning monetary forfeitures for serious violations of the Act place a limit of $100,000 on the penalty that may be assessed for any single violation by a common carrier. *See* 47 U.S.C. § 503(b)(2)(B). It would clearly be inappropriate to impose a greater penalty for withdrawal of an erroneous bid than for willful violation of the Communications Act.

Accordingly, PCS 2000 submits that waiver of the rule (or, in the alternative, a substantial reduction in the bid withdrawal penalty) is warranted in the public interest and should be granted without delay.

Sincerely,

Wilkinson, Barker, Knauer & Quinn

By: Michael Deuel Sullivan

Counsel for PCS 2000, L.P.

cc: Kathleen O'Brian Ham
Gerald P. Vaughan

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6. PLP, 12.0 **STAMP & RETURN**

NDS-C

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January 26, 1996

RECEIVED

JAN 2 6 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PCS 2000, L.P.
Block C PCS Auction
Request for Expedited Waiver or Reduction of Withdrawal Penalty

Attention: Kathleen Ham
Chief, Auction Division
Wireless Telecommunications Bureau

Dear Mr. Caton:

On January 23, 1995, PCS 2000, L.P. ("PCS 2000") erroneously submitted a bid in the Block C PCS auction for Market B324 for a price ten times as high as it intended. It informed the Commission immediately upon discovering the error and withdrew the bid the next day. PCS 2000 now asks the Commission to waive its withdrawal penalty rule. Imposing a penalty *potentially as large as $162 million* on PCS 2000, a small business owned and controlled by women and minorities, for an *innocent error* will both destroy the company's ability to continue its aggressive participation in the auction and chill the willingness of other small businesses and entrepreneurs to bid.

Accordingly, PCS 2000 requests, pursuant to Section 24.819(a)(1) of the Rules, a waiver of the bid withdrawal penalty imposed by Section 24.704(a)(1) of the Rules for PCS 2000's withdrawal of its erroneous high bid of $180,060,000 for the Block C license in Market B324 in Round 11. In the alternative, PCS 2000 requests that the penalty be very substantially reduced. PCS 2000 respectfully requests that action be expedited so that a resolution is achieved while the auction is ongoing. Delaying action until after the close of the auction would adversely affect the outcome of the auction.

DEPOSITION EXHIBIT
F6
11/25/97

Background

In Round 11 of the Block C PCS auction, PCS 2000 entered new bids for 38 markets, including Market B324. For each of these selected markets, PCS 2000 intended to, and believed at the time that it did, enter the minimum bid increment. For Market B324, the minimum bid increment would have resulted in a bid of $18,006,000.00. Due to an error, the bid for this market was recorded by the Commission as $180,060,000.00, exactly ten times as large as the intended bid. PCS 2000 discovered the error about two hours after the close of the bidding for Round 11, when it downloaded the round results from the FCC's internet FTP server. PCS 2000 immediately telephoned the FCC's auction contractor to indicate that it had intended to bid $18,006,000.00 and to report that the $180,060,000 bid was in error. Undersigned counsel also contacted officials of the Auction Division to inform them of the error The Commission verified that the bid had been posted as received, and on January 24, 1996, in the very next round, PCS 2000 withdrew the erroneous high bid of $180,060,000 00

PCS 2000 has conducted a preliminary investigation of the error, but the precise cause of the erroneous bid remains unknown The error appears to have occurred in PCS 2000's bid preparation and submission process and was likely caused by some combination of a departure from previously established internal procedures, human error, and the inability to conduct a complete cross-check of the submitted bids against other data prior to the conclusion of the bidding period because of a lack of time In addition, discovery of the error was delayed because the FCC's confirmation of the bid was not received due to a print server malfunction PCS 2000 is undertaking measures to ensure that there is no recurrence of these conditions

PCS 2000 notes that some press reports have erroneously claimed that PCS 2000 attributes the error to the Commission Because the results reported by the FCC did not reflect the bid that PCS 2000 believed it had submitted, the company contacted the FCC to determine whether an error had occurred in reporting the results The FCC confirmed that it reported the results that had been submitted, and PCS 2000 continued on with its investigation of its internal processes. PCS 2000 has now concluded, as discussed above, that the error occurred in its own bid preparation and submission process, PCS 2000 does not attribute this error to the Commission.

Discussion

PCS 2000 submits that the public interest would be served by grant of a waiver (or, in the alternative, a substantial reduction in the penalty) in the unique circumstances of the instant case, that strict application of the prescribed penalty for withdrawing a bid would disserve the public interest, and that the purpose of the rule would not be undermined by a waiver (Section 24.918(a)(1)) Prompt resolution of this is essential, because the lack of a decision will severely limit the ability of PCS 2000 to continue its active and aggressive participation in the auction and could aversely affect the willingness of other bidders to participate

Waiver of the penalty rule under these circumstances would not establish a precedent that would create any opportunity for mischief in the future. The bid submitted in error by PCS 2000 was clearly in error and not an attempt to manipulate the bidding. The $180,060,000.00 bid represented a per-pop price of $110, which is vastly in excess of the likely value of this license. Indeed, the erroneous bid exceeded the previous high bid by 900%, at a time when PCS 2000 (and many other bidders) were making only the minimum bids necessary. All of PCS 2000's bids in Round 11, except the erroneous bid for Market B234, were the minimum permissible bid, and the erroneous bid was exactly ten times the minimum permissible bid of $18,006,000.00. It is obvious that an extra zero was somehow accidentally added to the end of the bid amount. No reasonable bidder would have knowingly bid such a price for this license.

PCS 2000 promptly took steps to notify the Commission that an error appeared to have occurred. As Mr. Easton indicates in his declaration, immediately upon discovering that the FCC had recorded the bid as being $180,060,000.00, he informed Mr. Louis Segalos, an FCC auction official, that an error had occurred. He supplied Mr. Segalos with copies of spreadsheet printouts indicating the bids that PCS 2000 believed it had submitted. Shortly thereafter, counsel informed senior Auctions Division staff officials of the error. The erroneous bid was then withdrawn on January 24, 1996, during the next bidding round after the error was discovered.

The Commission adopted its bid withdrawal penalty rules to deter "[i]nsincere bidding, whether purely frivolous or strategic." *Competitive Bidding*, PP Docket 93-253, *Second Report and Order*, 9 F.C.C.R. 2348, 2373 (1994). The bid in question was neither frivolous nor strategic; it was, instead, clearly inadvertent and erroneous. Allowing the prompt withdrawal of a clearly erroneous bid without penalty will have no effect on the Commission's ability to penalize those who submit frivolous bids or bids that are part of a manipulative strategy. There is no indication in the *Second Report and Order* that the Commission intended to impose the bid withdrawal penalty on those who withdraw bids that were clearly submitted in error.

Moreover, the nature of the bid withdrawal penalty that the Commission adopted was specifically selected in order to take advantage of marketplace incentives by bidders who would consider the penalty as a price component. The Commission never considered the possibility that a bid might be submitted in error for many times the market value of the license. The Commission stated:

> A point to note in considering the appropriate level of bid withdrawal penalty is that the market generally places an upper limit on the amount that bidders will pay to the government for bid withdrawal. If the bid withdrawal penalty is too high, winning bidders who realize they bid too much will generally pay for the license and resell it in the after-market. The cost of doing this would be the difference between the bid price and the price obtained in the after-market.

9 F.C.C.R. at 2373. These economic calculations are relevant only to the intentional submission of an excessive bid and its subsequent withdrawal, not to the withdrawal of a bid erroneously submitted for an amount ten times as high as intended.

In establishing the bid withdrawal penalty, the Commission was particularly sensitive to the financial circumstances of designated entities, who it noted "are less likely to have the option of purchasing a license and reselling it as an alternative to bid withdrawal." *Id.* In the case of a grossly excessive bid submitted in error, a capital-constrained designated entity can neither buy the license at the bid price for resale nor pay a penalty amounting to many times the value of the license. It is noteworthy in this connection that the Commission recognized that "requiring the forfeiture of all funds on deposit with the Commission could, in some cases, be too severe a penalty." In the instant case, the funds PCS 2000 has on deposit would cover only a fraction of the penalty. A forfeiture of this magnitude would render this designated entity unable to pay for *any* licenses for which it may be the high bidder. Thus, application of the rules would have a result directly contrary to the purpose for which the rules were adopted

None of the participants in the C Block auction would be able to pay a penalty of this magnitude. It would vastly exceed the $50 million upfront payment posted by PCS 2000 (and indeed would exceed any Block C bidder's upfront payment) and would, if not waived, render the company unable to acquire any licenses Other bidders in the auction would be similarly affected by a penalty were they to make a similar mistake Prompt action on this matter is needed to avoid chilling participation in the auction

It is important to recognize that if PCS 2000 is subjected to this unduly burdensome penalty, its bidding capacity will be drastically reduced, if not eliminated. As a result, less money will be involved in the auction and licenses may well be undervalued. This would lead to spectrum being assigned on a less than optimal economic basis, instead of being assigned to those valuing most highly A prompt waiver of the rule would ensure the integrity of the auction process as a whole and minimize any disruption to this process

PCS 2000 regrets that the error occurred Nevertheless, no party has suffered any harm as a result of the erroneous bid or its withdrawal The error occurred relatively early in the auction and the bid was promptly withdrawn Moreover the amount bid was so obviously in error that no party could seriously have considered it as a strategic assessment by PCS 2000 of the value of the license. As a result, any party wishing to make a good faith bid for the market involved was, and remains able to do so virtually unfettered by the effect of the withdrawn bid.

In the event the Commission does not waive the withdrawal bid penalty rule entirely, PCS 2000 respectfully requests that the penalty be reduced very substantially, to a level more appropriately considering the true impact of PCS 2000's actions on the legitimacy of the auction for the Norfolk BTA license The Commission never anticipated that a bidder might be subjected to a penalty vastly exceeding the value of the license for which it had bid. A bidder who engages in strategic bidding to adversely impact or even close out another bidder and then withdraws its bid may be liable for a penalty that represents a small fraction of the license's value. No public interest would be served by imposing a far greater penalty on a bidder who bids an obviously erroneous amount and then must withdraw such an erroneous bid. The Communications Act does not contain specific provisions governing the penalties that may be imposed as part of the auction process; by way of analogy, however, the provisions of Section 503 concerning monetary forfeitures for serious violations of the Act place a limit of $100,000 on the penalty that may be assessed for any single violation by a common carrier. *See* 47 U.S.C. § 503(b)(2)(B). It would clearly be inappropriate to impose a forfeiture penalty for withdrawal of an erroneous bid that is of such substantial magnitude greater than the penalties that Congress has mandated for willful violation of the Communications Act.

Accordingly, PCS 2000 submits that waiver of the rule (or, in the alternative, a substantial reduction in the bid withdrawal penalty) is warranted in the public interest and should be granted without delay.

Sincerely,

Wilkinson, Barker, Knauer & Quinn

By Michael Deuel Sullivan

Counsel for PCS 2000, L.P.

Enclosures

cc Kathleen Ham
Gerald P. Vaughan

Declaration of Javier Lamoso

I, Javier Lamoso, am the President of Unicom Corporation, the general partner in PCS 2000, L.P. I have read the foregoing "Request for Expedited Waiver or Reduction of Withdrawal Penalty" and declare under penalty of perjury that the statements therein are true and correct, on information and belief.

Executed: January 26, 1996

Declaration of Anthony T. Easton

I, Anthony T. Easton, am the Chief Executive Officer of Unicom Corporation, the general partner in PCS 2000, L.P.

I have read the foregoing "Request for Expedited Waiver or Reduction of Withdrawal Penalty" and the statements therein are true and correct to the best of my knowledge.

I supervised the preparation and submission of PCS 2000's bids for Round 11 of the C Block PCS auction, in which a bid was erroneously submitted for Market B324 in the amount of $180,060,000 instead of the minimum bid of $18,006,000. While PCS 2000 has been unable to determine the precise manner in which the error occurred, there are a number of ways in which the error could have occurred, in light of a departure, during Round 11, from the internal bidding procedures normally followed. The source of the error is likely to have been either (1) human error in entering data into the spreadsheet program PCS 2000 uses to prepare its bids, (2) an error introduced in the course of manually changing bids on-line in real time, or (3) an error introduced in transferring the data file between our computers on our local network or in transmitting the file over the bidding network.

Normally, any such error would have been discovered and corrected during multiple cross-checking processes. Unfortunately, during Round 11 these cross-checking processes were not followed fully, because it became necessary to manually change certain bids on-line shortly before the close of the bidding round in order to comply with bidding eligibility and activity rules. As a result, there was not sufficient time to recheck the details of every bid. In addition, both the network print server and the fax server that normally print the FCC confirmation of bids received were functioning erratically due to an insufficient disk space problem caused by the overload of the buffer area by several twelve to fifteen page faxes, as a result of which PCS 2000 did not receive any confirmation that would have timely alerted the company to the error.

I declare under penalty of perjury that the foregoing is true and correct, based on personal knowledge and on information and belief.

Executed: January 26, 1996

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FINAL

Minutes of the Meeting
of the Board of Directors
of Unicom
January 27, 1996

A meeting of the Board of Directors of Unicom Corporation (the "Company") was held on January 27, 1996 at the Marriot Hotel in San Francisco, California. Present at the meeting were Fred H. Martinez, Javier Lamoso, Dan Parks, Terry Easton, Peggy Minnich, Pat Jordan, Jim Perry, Quentin L. Breen and Gary Arizala. Also present were Richard Reiss, Larry Movshin, -partner of Wilkinson Barker and Frank Goldstein, of Morgan Lewis and Bockius. Lawrence Odell kept the minutes.

As the first order of business, Mr. Martinez asks the members of the Board to review and discuss the minutes of the prior Board meeting. There was a brief discussion held with respect to the content of such minutes. There were some typographical errors pointed out by Ms. Jordan. Also, Ms. Jordan observes that the minutes state that as part of the bidding strategy the Company will be limiting itself to the geographical area West of the Mississippi. She corrects it by reminding the Board that subsequently it was agreed that there would be no such limitation. Upon motion duly made by Ms. Jordan and seconded by Mr. Perry, it was unanimously,

> RESOLVED, to approve the minutes of the prior meeting as stated therein together with the amendments proposed by Ms. Jordan.

As the next order of business, Mr. Martinez recommends that the order of the agenda be amended in order to provide Mr. Movshin and Mr. Goldstein the opportunity to discuss the matters related to the Norfolk, Virginia bidding error. Upon motion duly made by Ms. Minnich and seconded by Mr. Arizala it was unanimously,

> RESOLVED, to alter the order of the agenda so as to provide Messrs. Goldstein and Movshin the opportunity to discuss the above mentioned bidding error.

At this point, Mr. Movshin begins a discussion with respect to the bid made by the Company in error for the Norfolk, Virginia market. He indicates that the Company intended to make a bid for the Norfolk, Virginia market at a price per pop of $18,006,000. Inadvertently, an extra zero was added to the bid so the bid amount resulted in a total dollar amount of 180,060,000. As reported, the erroneous bid was not detected by the Company until two hours after the close of the round on the day of January 23. At that point the Commission was immediately notified.

Mr. Movshin explains that the current status of the bid is that it was withdrawn the next day during the subsequent bidding round, and the intended minimum bid was made. The potential penalty, that pursuant to applicable regulations the FCC can impose, is $162 million which is the spread between the next highest bid and the withdrawn bid. Mr. Movshin states that the penalty section was introduced into the regulations in order to avoid strategic bidding intended to take out the smaller applicants and to avoid frivolous bidding. He believes that if the penalty is too high or too low it would not accomplish its intended purpose. If it is too high it would tend to intimidate applicants from bidding. If it is too low the applicants may not consider the sanction a serious deterrent. Unfortunately, he says that the applicable regulations do not cover situations involving erroneous bids. Notwithstanding, he feels that the Company has the best possible set of facts and circumstances to argue in favor of a waiver of the penalty sanction. In this regard he reports that his firm has filed on behalf of the Company a waiver request or the imposition of a modest penalty by the FCC.

Mr. Movshin continued the conversation explaining that there is some precedent at FCC with respect to the similar situations where bidding errors have occurred. To his knowledge, however, the Commission has not resolved any of the waiver request in connection with those other situations. It seems to him that the Commission does not want to draw a bright line. The Commission has set up programs for the bidding process that provide checks and balances which the applicants can utilize. In any event, he believes that the arguments to use with the FCC should include the following: 1) that this was an obvious human error without an intent to gain some strategic advantage, and that it was not frivolous; 2) that the bidder withdrew the bid quickly, as soon as it was practicably possible; 3) no one could interpret the bid for the Norfolk market as a serious bid; 4) if the penalty is not waived this would have a chilling effect on the other bidders regarding future rounds; 5) the FCC must show some element of compassion, otherwise applicants would not bid electronically; 5) If the FCC does not waive the penalty, the limited partners could lose PCS 2000. Finally, Mr. Movshin says that the preliminary decision is in the hands of the staff at the FCC.

Mr. Movshin further recited that there will be a meeting soon with two high level staff members of the FCC. The persons to be present will be Fred Martinez, Javier Lamoso, and Larry Movshin. Mr. Movshin stresses that the timing to resolve the bid error problem is important so that it would not affect on-going bidding. Mr. Movshin here states that it is his belief that the Wireless Communication Bureau can influence the decision. His opinion as to how quickly the FCC would resolve the matter was 2 weeks. In conclusion, Mr. Movshin states that from here the recourse is to proceed with the FCC and if it fails the last recourse is to go to court. At this point, Mr. Easton states that the worst case scenario would be to actually buy that market, build it and subsequently sell it for roughly the amount for which it was purchased. Doing the above will add a cost to the Company of about $5 a pop or $100 million worth of acquisitions and thereby providing a lower rate of return.

Regarding Mr. Easton's above proposal, Mr. Martinez expresses concern with the investors and the responsibility the Company has with them. Mr. Movshin interjects by suggesting that for the waiver grant the FCC may be agreeable to take the upfront payment with respect to that market as the penalty. Mr. Movshin explains that the bid for the Norfolk market was $180 million, $9 million owed at this time and the other $9 million due when the market was awarded, less the application of the 25% credit. The foregoing translates into $6 million now and $6 million at the bid grant, plus the financing.

In connection with the bid error, Ms. Minnich states that she knows of other bidders that are opposing the waiver filed by the Company. At least one that she knows is called Air Link. Mr. Martinez poses to Mr. Movshin the question as to whether he believes that the Commission will treat the Company fairly in light of all the opposition, as reported by Ms. Minnich.

Mr. Movshin begins by saying that an important consideration he feels will be a factor in the decision making process at the FCC will be the past experiences with Quentin Breen and Terry Easton. In particular that may be construed as negative in view of their involvement in General Cellular and, that they are viewed as an application mill by the Commission. Because of this, he believes that some Commission members may be suspect of the Company. Mr. Lamoso interjects by stating that his greatest concern relates to the negative comments of those who filed objections to the waiver. He states that probably the most imperative issue to deal with is the timing or delay of the resolution of the waiver petition. Accordingly, he suggests the Board think about a meeting with the FCC to urge the Commission to rule as fast as possible. Mr. Easton agrees and suggests that if the bidding strategy by the Company were to change it could end up costing the FCC about $500 million in bid amounts.

At this juncture, Mr. Goldstein addresses the Board to discuss the duties and responsibilities of the Board to the shareholders and to the limited partners. In this context he cites case law for the proposition that directors of a general partner in a limited partnership may be liable to the limited partners in addition to the stockholders of the corporation. While he indicates this holding, which was in the Court of Chancery in Delaware, is not precedent setting, it nevertheless should be the guiding principle. Thus, Mr. Goldstein recommends a number of steps to undertake. These include, perform a fact finding investigation to determine exactly what happened; install the necessary mechanism to enable the Company to have the comfort that it will not occur again; at the point in time it is believed to be appropriate, disclose the incident to the limited partners; further, the Company should hold Romulus accountable, inasmuch as this is the Company retained to perform the bidding services; in this regard, discuss the issues with Romulus and obtain some form of assurance that the mechanisms are in place to avoid a similar situation from occurring in the future. This is important since if something like this were to occur again the claimants, in an action against the Board, will ask what the Board did do to prevent a reoccurrence of the error.

Mr. Martinez then asks whether the fact that the bidding agents are Board member helps or hurts the cause: Mr. Goldstein states that in a litigation scenario, plaintiffs lawyers can criticize the closeness of the arrangement and raise the specter of conflict of interest. On this statement, Mr. Easton then asks what Mr. Goldstein would recommend. Mr. Goldstein responds that he would like to hear his version of the facts first and the methods to be employed to avoid another mishap.

Mr. Martinez interjects by recounting how he became aware of the situation. He says he was called by Mr. Lamoso who explained it to him in full. At that point he called counsel in Washington to inform them of the events. After that he called Mr. Easton and discussed it with him. Mr. Easton shortly thereafter provided him with a written declaration of the incident. At this point, Mr. Martinez invites Mr. Easton to address the Board to provide his report of the bidding error incident.

At this point, Mr. Easton begins addressing the Board with respect to the bidding error. Mr. Easton starts by saying that both he and Mr. Breen were the bidding agents responsible for the round in which such error was committed. He said that initially he wanted to use the FFC computer on-line system to manually insert the bidding amounts. This consisted principally of a stand-alone computer with a modem which would access the FCC computer bidding system. This bidding system, he reports, has been contracted out by the FCC.

In addition to the above, the FCC, he continues to inform, has provided the bidders with software for purposes of up-loading the bidded amounts. Mr. Easton states that this software has a lot of bugs. The software, he indicates, will only work with Windows 3.1. Notwithstanding they, as bidding agent, have complied with the requisites under the provided software. Mr. Easton further informs that the auction bidding software allows from two modes of entry. In the first, the bidder logs in the sequence number. Upon performing that step, his own computer screen gives the bids to be submitted. Upon verifying the bids, they are submitted. Subsequent new bids may be submitted on-line. Upon completion of the submission, the computer will issue a last warning, and thereafter if confirmed, the submitted bids will be printed out.

The procedure he has installed is to create a file for the bid amounts by setting up his own front-end system. In this respect they use the excel spreadsheet software for these purposes. These are set up in his office. The procedure is explained by Mr. Easton. First, he prepares a sheet of options for the markets to bid on. In the other option, the bidder bids the raw number of bidding units per market. However, in this method the price per pop will not be displayed in the FCC system. The front-end system, however, does display the price per pop for the markets bid on. This front-end system has warning systems, Mr. Easton continues to explain. In this system the bidders enter the bids on a spreadsheet that contains all of the markets. After submission the FCC provides information on the high bidders for the particular round. On markets that the Company is the high bidder the bids are loaded back into the system thereby showing the total position.

Mr. Easton further reports that after the above procedure, they take the spreadsheet information to review the scenarios. The spreadsheet is printed out, then the final spreadsheet is prepared showing any new markets that were bid on. These are then to sent to the FCC. The round number is inserted in the spreadsheet, it is logged into the work station, which is on-line with the FCC computer. The file is then up-loading into the FCC's work station, and upon completion of the up-loading a printout is obtained. This print-out then is compared to the numbers on the original bid sheet. If both coincide then the bidders submits an "ok" to the FCC computer. At this point the file uploaded into the FCC computer in final form.

Mr. Easton explains that the work on the bids is done usually the night before the bids are due to be posted. The bids are thoroughly reviewed and analyzed, set-up and printed out on the spreadsheet, and finally initialled by the bidder and left on the operators chair for up-loading into the FCC computer the next day. On the day the error occurred Mr. Easton says that one of the breakdowns in the checks and balances systems was that Mr. Breen could not be at the office the next morning to review, double check the bids and finally agree to submit them. He was not there Tuesday either, and Mr. Easton states there should always be two people for this work. Mr. Easton says then that on Tuesday, the fateful day that the bidding error occurred, one of three things happened. In the bidding process using the excel spreadsheet, the bids were selected on price per pop or on a dollar basis. The night before the bidding was not prepared. He came into the office about 8:00 a.m. that morning without an opportunity to review the spreadsheet in which the new bids were contained. Because of this, there may have been a possible keyboard error he overlooked and was then up-loaded into the FCC computer in this fashion.

Another complication that could have contributed to the problem is that at about 9:00 a.m. he had a telephone conversation with Mr. Breen on the road as he was driving down. He read the bids to Mr. Breen who afterwards wanted to make certain changes to the bid submission sheet in respect of some markets. On Mr. Breen's instructions he went to the FCC work station and manually deleted 4 bids. It is possible that the operator who deleted these markets accidentally deleted the Norfolk market, looked at the screen and retyped it in but inadvertently adding an extra zero. Mr. Easton says this very well could be the case since he has seen that this particular operator had once before accidentally deleted another market. In this case, he proceeded to print the submitted sheet. This sheet was then compared to match the price per pop, but would not show the total dollars bid. Thereafter he went back to the system, initialed the spreadsheet, and ordered it be sent to the FCC.

Mr. Easton further states that what also complicated the matter was that the office was having a problem with the fax server system. The fax machine is in continuous heavy use and therefore the printout sent by the FCC did not arrive in time to review it and compare it with the offices bid sheet. Without being able to confirm the bids the operator, due to lack of time, he proceeded to confirm the submitted bids with the FCC. Mr. Easton goes on to say that under the system that was being used, the files sent to the FCC could be pulled back at about 10:00 a.m. which was enough time to withdraw any erroneous bids during the allotted time between 10:30 and 11:00. However, for the past week they have had computer problems, causing the data from the FCC to be received back at around 12:15, after the deadline imposed by the FCC to withdraw bids. It is about that time when the data came back on Tuesday